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IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CIVIL DIVISION  
CASE NO. 08-3377-CC-05 (08)

2008 AUG -1 AM 8:03  
CLERK OF DISTRICT COURT  
MIAMI-DADE COUNTY, FLA.

HIALEAH HOUSING AUTHORITY,

Plaintiff,

-VS-

ELSIDO BATISTA,  
and all others in possession.

Defendant(s).

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**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS**

THIS CAUSE came before the Court on Defendant's Motion to Dismiss. The Court after conducting a hearing on April 15, 2008, and having been fully advised on the premises, hereby rules as follows:

**ORDERED and ADJUDGED:**

1. Defendant Elsidio Batista and his family live in public housing operated by the Hialeah Housing Authority (HHA).
2. Defendant's tenancy is governed by the Florida Residential Landlord and Tenant Act, Chapter 83, Fla. Stat., The United States Housing Act of 1937, 42 U.S.C. § 1437f et seq., and federal regulations promulgated by the United States Department of Housing and Urban Development found at 24 C.F.R. Part 960 et. seq.
3. In 1998, Congress passed the Quality Housing and Work Responsibility Act of 1998

(QHWRA) which required non-exempt public housing residents to complete 8 hours of community service or economic self-sufficiency activities. *See* 42 U.S.C. §1437j(c).

4. The Department of Housing and Urban Development (HUD) promulgated regulations which govern the community service program. *See* 24 C.F.R. Subpart F, §960.600-609.

5. HHA seeks to evict the Batista family because Ms. Batista allegedly failed to complete her community service requirements.

6. When HHA terminates a family's tenancy for failure to comply with the community service requirements, HHA's Notice must comply with 24 C.F.R. §960.607(b)(2). *See also* 42 U.S.C. §1437j(c)(3)(C).

7. 24 C.F.R. §960.607(b)(2) requires the Notice to:

(i) Briefly describe the noncompliance;

(ii) State that the PHA will not renew the lease at the end of the twelve month lease term unless:

(A) The tenant, and any other non-compliant resident, enter into a written agreement with the PHA, in the form and manner required by the PHA, to cure such noncompliance, and in fact cure such noncompliance in accordance with such agreement; or

(B) The family provides written assurance satisfactory to the PHA that the tenant or other noncompliant resident no longer resides in the unit;

(iii) State that the tenant may request a grievance hearing on the PHA determination, in accordance with part 966, subpart B of this chapter, and that the tenant may exercise any available judicial remedy to seek timely redress for the PHA's nonrenewal of the lease because of such determination.

8. On December 12, 2007, HHA served a 30 Day Notice to Vacate on Defendant which states that it is terminating the lease because Ms. Batista failed to report and provide documentation that she completed 8 hours of community service per month for 12 months.

9. The 30 Day Notice does not comply with 24 C.F.R. §960.607(b)(2). Specifically,

the Notice does not advise Defendant that HHA will enter into a written agreement to cure the non-compliance of community service hours. The Notice does not state that Defendant can provide written assurance that Ms. Batista does not live in the unit. The Notice does not state that Defendant can request a grievance hearing. Instead, the Notice specifically states that Defendant is not entitled to a grievance hearing.

10. Therefore, the 30 Day Notice attached to HHA's complaint is facially defective.

11. The service of a proper termination notice is a condition precedent to the filing of an eviction action.

12. A statutory cause of action cannot be commenced until Plaintiff has complied with all conditions precedent. *Ferry Morse Seed Co. v. Hitchcock*, 426 So.2d 958 (Fla. 1983).

13. A proper and non-defective termination notice is a statutory condition precedent and the service of a defective notice by the Plaintiff gives the Court no ability to entertain a complaint based on the defective Notice. *See Rolling Oaks Homeowners Assn v. Dade County*, 492 So.2d. 686 (Fla. 3rd DCA 1986); *Investment and Income Realty v. Bentley*, 480 So.2d 219 (Fla. 5th DCA 1985); *Cook v. Arrowhead Mobile Home Community*, 50 Fla. Supp. 2d. 26 (Columbia Cty. 1991) (Opinion Answering Certified Question); *Metropolitan Dade County v. Dansey*, 39 Fla. Supp.2d 216 (Dade Cty. 1990).

14. When less than all the requisite elements of a cause of action exist when the complaint is filed, the complaint must be dismissed without leave to amend. *Rolling Oaks Homeowner's Assn. v. Dade County*, 492 So.2d 686 (Fla. 3<sup>rd</sup> DCA 1986).

15. The Motion to Dismiss is Granted and the Complaint for eviction is dismissed without leave to amend.

16. The Court reserves jurisdiction to tax costs against HHA.

DONE and ORDERED in Chambers at Miami, Miami-Dade County, Florida, this 22 day of July  
July  
April 2008.



COUNTY COURT JUDGE

**Wendell M. Graham**

Copies Furnished to:

Jeffrey M. Hearne, Esq.  
Susan Rosales, Esq